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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,335	12/21/2001	Jill Stamm	39672.0200	2536

20322 7590 05/18/2004

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EXAMINER

SUHOL, DMITRY

ART UNIT PAPER NUMBER

3712

DATE MAILED: 05/18/2004

cs

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 10/028,335	Applicant(s) STAMM ET AL.	
Examiner Dmitry Suhol	Art Unit 3712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-13, 15, 16, 21 and 22 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-13, 15, 16, 21 and 22 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. ____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: ____.

DETAILED ACTION

Drawings

The proposed drawing correction and/or proposed substitute sheets of drawings, filed on 2/23/04 have been disapproved because they introduce new matter into the drawings. 37 CFR 1.121(a)(6) states that no amendment may introduce new matter into the disclosure of an application. The original disclosure does not support the showing of drawings of housing having indicia of a predetermined stage configured to be viewed from the outside of the housing.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-13, 15-20 and 21-22 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support in the original specification or drawings of housing having indicia of a predetermined stage configured to be viewed from the outside of the housing as required by claims 1 and 16.

Regarding claim 15, it is unclear how a system as claimed by claim 1 can be an electronic form. The system as claimed is made up of activity cards stored in a housing and is therefore NOT an electronic format.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Brilliant! Beginnings™ Baby Brain Basics™ Birth to 12 months Parent Kit", here from referred to as Brilliant beginnings in view of Werzberger '298. Brilliant beginnings discloses a system and method for facilitating early brain development containing most of the elements of the claims including, obtaining a system for facilitating early brain development (read onto obtaining the brilliant beginnings system) wherein the system targets a predetermined stage of development (pages 79-80 in guide book) as required by claims 1 and 16, including at least one item in a housing specifically related to each area of brain development (security, touch, eyes, play and sound) is shown as the "Baby's Rhyming Photo Book" and CD's where the two are related to each area of brain development, housing including indicia of a predetermined stage is shown as the indicia on the front, back, top, bottom and sides of the housing, selecting an activity card (located within the housing) wherein the activity card describes at least one activity that

stimulates a predetermined aspect of brain development (read onto the selection of the appropriate page of activities described on pages 84 [specifically, the activity entitled faces is an activity that may be practiced with the item "Baby's Rhyming Photo Book" found in the housing], 88-90, 94-97, 103-108, 114-118) as required by claims 1, 4 and 16. The step of engaging a child's attention, as required by claims 1, 7 and 16, is described through out pages 84, 88-90, 94-97, 103-108, 114-118. An example of a step of modeling a selected activity for a child and prompting the child to perform the selected activity, as required by claims 1, 12 and 16, is described on page 115 under the activity entitled "Let's Go Bowling". It should be pointed out that although the dolls described in the activity are not explicitly provided in the housing the system of Brilliant beginnings does provide the caregiver with a booklet of appropriate toys (e.g. "Toy Guide") including dolls and soft balls as required by the activity "Let's go bowling". Therefore it would have been obvious to provide the dolls and balls with the system of Brilliant Beginnings for the purpose of providing a complete system to the caregiver and child.

Obtaining stage specific activity cards comprising caregiver directions, as required by claims 2 and 16, is described on pages 79-80 and the different activities and caregiver instructions are shown in pages 84, 88-90, 94-97, 103-108 and 114-118. Obtaining a first item to stimulate vision, as required by claims 2 and 5, is described on page 84 under the heading "Faces" where an item (picture) is obtained and used to stimulate a baby's visual acuity. Obtaining a second item whose use promotes the concept of attention, as required by claims 3 and 6, is described on page 84 under the

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heading "Changeable Mobile" where there are a plurality of objects obtained and used to promote attention from a baby. Brilliant beginnings further discloses the importance of facial contact with a baby/child and directing the child attention to a defined space (page 84, activities entitled "Faces", "Funny Faces", and "Changeable Mobile", where the location of the mobile of the pictures is considered to be a defined space), as well as explicitly teaching a step of engagement being comprised of focusing a child's attention on an activity by establishing eye contact with the child (page 103, activity entitled "Pop the Balloon").

Regarding claim 8, encouraging a child through a visual stimulus is described on page 84, activities entitled "Faces", "Funny Faces", "Changeable Mobile".

Regarding claim 9, visual stimulus comprising at least one of varied facial expressions and use of an object is described on page 84, activities entitled "Faces" and "Funny Faces".

Regarding claim 10, the use of a sound-generating object to engage a child is described on page 95, activity entitled "Bells and Things" and page 103, activity entitled "Jingle the Bell".

Regarding claim 11, varied voice intonations are described throughout the guide book including on pages 84, activity entitled "The Magic Breadth", page 90, activity entitled "Sing Songs" and "Read, Read, Read" and especially on page 96, activity entitled "Leg over Leg".

Regarding claims 16 and 21-22, a description of at least one importance of the selected activity is found in the benefits section related to each activity as described

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throughout the handbook, while similar activities that can also be accomplished to work on the same skill are shown (for example) on page 84 under "activities to nurture intellectual development".

Regarding claims 16 and 22, a description of at least one importance of the selected activity to brain building of future school skills is found throughout the handbook (for example, activity listed on page 117 entitled "What's This?" is clearly teaching comprehension of words [a must in school]).

Although Brilliant Beginnings does not appear to explicitly contain indicia that, providing background information about the type of activity and suggestions about what to say to the child, as required by claims 16 and 22, it would have been obvious to have provided such information since it would only depend on desired information to be displayed. Furthermore, it has been held that when the claimed printed matter is not functionally related to the substrate it will not distinguish the invention from the prior art in terms of patentability. *In re Gulack* 217 USPQ 401, (CAFC 1983). The fact that the content of the printed matter placed on the substrate may render the device more convenient by providing an individual with a specific type of description/information does not alter the functional relationship. Mere support by the substrate for the printed matter is not the kind of functional relationship necessary for patentability. Thus, there is no novel and unobvious functional relationship between the printed matter and the substrate which is required for patentability.

The use of different manners of providing instructions, as required by claim 13, is pointed to through out the guidebook. For example, on page 115 all of the activities

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require instructions and the step of demonstrating the activity as described would read upon the use of minimal verbal cues.

Although Brilliant beginnings discloses most of the elements of the claims the reference utilizes a guide book and not "activity cards" as claimed by claims 1-2. However Werzberger '298 teaches that it is known to provide activities listed on activity cards to educate and instruct (figure 9, element 416). Therefore it would have been obvious to one having ordinary skill in the art at the time of the claimed invention to print the activities of Brilliant beginnings upon activity cards instead of in a guide book for the purpose of providing a easily manipulated activity instruction.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brilliant beginnings and Werzberger '298, as stated above, and further in view of Cohen '658. Although Brilliant beginnings, as modified by Cohen, discloses all the elements of the claims, as stated above, the reference fails to teach a system being electronic, as required by claim 15. However, Cohen teaches that it is known to provide an educational system utilizing activities in an electronic form (see abstract). Therefore it would have been obvious to provide a system of Brilliant beginnings as an electronic version for the purpose of introducing infants and young children to computers.

Response to Arguments

Applicant's arguments filed 2/23/2004 have been fully considered but they are not persuasive. Applicants first argument appears to focus on the differences between

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applicants invention and Werzberger. In response, the examiner points out that Werzberger is merely relied upon to teach the use of instructions for activities in the form of "activity cards", thus making a case of obviousness to manufacture the book pages of Brilliant beginnings that give directions to activities in the form of activity cards. Applicants next argument focuses on applicants assertion that Brilliant Beginnings does not provides the activity items needed to complete the activities. In response, the examiner points out that Brilliant Beginnings does provide some items in it's housing (e.g. the CD's and photo album) and further provides a "TOYGUIDE" which lists a variety of toys that can be used to practice the activities listed therein (see above rejection), therefore it would have been obvious to provide any one (or more) of the toys listed in the "TOYGUIDE" with the system of Brilliant Beginnings for the purpose of providing a complete system to the caregiver and child. Furthermore it should be noted that applicants argument that regarding the number of items contained within the housing is not germane to the rejection at hand. Applicants do not claim any specific number of items, in fact applicants continue to use terminology of "at least one" item in which case, using the broadest possible interpretation in the art the examiner has equated "at least one" with one.

Additionally, applicants appear to argue that Brilliant Beginnings does not teach linking brain development to future school skill. In response, the examiner strongly disagrees and points out that everything a baby learns is a step process to the final outcome and thus everything from coordination to speech and reading (both of which are clearly taught by Brilliant Beginnings) is linked to future school skills.

Regarding applicants argument with respect to the indicia carried by the applicants activity cards, the examiner directs applicants attention to the above rejection and associated case law.

With respect to applicants arguments regarding the asserted lack of item related to security, touch, eyes, play and sound, the examiner points out that the items (photo book and CD's) found in the housing of Brilliant Beginnings clearly relate to each of the above areas of brain development (i.e. a photo book with pictures of family and friends would relate to security, eyes, touch and play since it is made of a soft material for a baby to touch and play with. While CD's clearly relate to sound).

Regarding applicants arguments with respect to hindsight of putting the instructions of Brilliant Beginnings onto cards, applicants are directed to the response with respect to Werzberger.

With respect to applicants arguments regarding the electronic format of their device, the examiner acknowledges that applicants disclose that their device may take on an electronic format as well as a non-electronic format, however claim 1 is clearly drawn to a non-electronic format making it unclear how dependent claim 15 can bring in an electronic limitation. In other words, claim 1 states that activity cards are "within said housing" and since no where does applicants disclosure state that the activity cards are electronic the invention (as claimed) must, as claimed is drawn to a non-electronic format.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

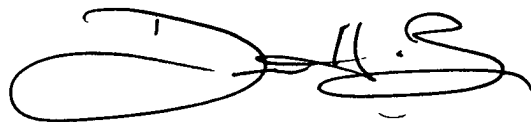
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dmitry Suhol whose telephone number is 703-305-0085. The examiner can normally be reached on Mon - Friday 9am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 703-308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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